

Victim blaming; a disparity between the law and justice

'SHE IS IN THE TRUE SENSE ASKING FOR IT'

Judge Bertrand Richards 1982

R. V EVANS (CHEDWYN) [2016] EWCA CRIM 452

The case of R. v Evans (Chedwyn) [2016] EWCA Crim 452 was an appeal brought against the conviction of the footballer, Chedwyn Evans. The case caused controversy due to the appeal being based on the complainant's previous sexual history; there are general statutory safeguards which prevent evidence being presented, and questions being asked, regarding the complainant's private sexual history.

The safeguards preventing the presentation of evidence of the complainant's sexual history were introduced to protect women from the 'twin myth' that 'unchaste women are more likely to consent to sex and are therefore less worthy of belief'. Only under very specific circumstances will such evidence be given leave to be presented in court. The 'new evidence' was simply that the complainant has a preference for 'particular positions...and used a distinctive expression demanding intercourse with her harder'.

This evidence was deemed 'so similar that it cannot be reasonably explained as a coincidence'; the necessary threshold for such evidence to be admitted.

THE CONCEPT OF CONSENT

At the heart of the matter is the concept of consent; particularly whether a complainant has the capacity to consent or not.

According to statute, a person consents if he agrees by choice, and has the freedom and capacity to make that choice.

The problem is that studies have shown that each juror understands the terms 'freedom' and 'capacity' in a different way. As such, these terms create a malleable and unpredictable legal test due to the legislation not clearly defining what each word means in a legal sense.

Without a clear definition or direction, these concepts are open to individual interpretation. Feminist social scientist, Carol Smart, points to the issue surrounding consent and pleasure. She states that a female

victim faces an apparent double burden of proof; she must prove, beyond reasonable doubt, that 'she was unwilling to have intercourse and that

she could not possibly have enjoyed it'. If a victim can be portrayed as having been enjoying the sexual intercourse then a lack of consent appears to become immaterial.

'IF SHE DOESN'T WANT IT SHE ONLY HAS TO KEEP HER LEGS SHUT'
Judge Wild 1982

ISSUE OF VICTIM BLAMING

Carol Smart focuses a lot of her work on the perception of women, in both law and society, and the idea that in cases of rape, it is the victim who becomes the prime suspect and in proving a rape charge, it places the victim as much on trial as the defendant.

An issue that victims of sexual assault and rape face within society is that often times it is implied that were it not for the victim's own culpability, no crime would have been committed. The issue therefore arises where a victim is portrayed as being somewhat blameworthy for what has happened to them, they lose their perceived innocence and their victim status.

As such, women who deviate from the patriarchal ideals about the inferior role and nature of women and deviate from these stereotypes are more likely to be accused of victim culpability. In other words, if a complainant does not fit the stereotypical 'perfect victim', they are more likely to be judged as having done something to cause the offence to have been committed. The victim is to blame.

JUDGE BRANDS RAPE VICTIM 'EXTREMELY FOOLISH' FOR DRINKING TOO MUCH

<http://www.telegraph.co.uk/news/uknews/crime/11411745/Judge-brands-rape-victim-foolish-for-drinking-too-much.html>